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Burlington Development Review Board City of Burlington, Vermont

Re:

Burton/Higher Ground Performing Arts Center Conditional Use Application 20-0854CA/CU; 266 Queen City Park Rd (ELM, Ward 5S) Burton Corporation

Dear Members of the Burlington Development Review Board:

The Law Firm of McNeil, Leddy and Sheahan, P.C. represents the South Burlington City Council ("SB Council") and submits this correspondence on their behalf.

The SB Council thanks the Burlington Development Review Board ("DRB") for the opportunity to provide input on the pending performing arts center conditional use application of Burton/Higher Ground.

As proposed, the location of the performing arts center on Queen City Park Road would be immediately adjacent to the border between Burlington and South Burlington. South Burlington's Red Rocks Park is across the street, as is South Burlington's Queen City Park Neighborhood (a Residential Zoning District under South Burlington's Land Development Regulations). In addition, the portion of Queen City Park Road that runs along the site's western boundary is in South Burlington.

Accordingly, although this proposed use will be located in Burlington, the SB Council has an interest in ensuring that the proposed use harmoniously fits in with the surrounding area, especially with regard to South Burlington residents and the property of the City of South Burlington.

The SB Council has several concerns that remain unaddressed in the application materials submitted by Burton/Higher Ground: noise, traffic, parking, safety, protection of Red Rocks Park and staffing/personnel levels are all issues that require further attention. The SB Council is currently engaged in discussions with Burton/Higher Ground to address these concerns in the hope that collaborative solutions can be achieved. Until then, the SB Council feels it important to enumerate its concerns.

The SB Council takes each up as listed and not in order of importance (the SB Council recognizes that many of these concerns overlap):

1) Noise. The SB Council is concerned for those South Burlington residents whose homes lie near the proposed site. As the site has previously been utilized for manufacturing during the day with very limited evening/night use, adjacent residents who have not experienced evening/night time sound could potentially be exposed to disturbing event performance sounds. There are two components to this SB Council concern: a) event performance sound; and b) event attendee sound.

a) Event Performance Sound:

This concern relates directly to sounds from the performances themselves. The SB Council requests that if this application is approved, that any approval be conditioned on the requirement that no event sound be permitted to travel beyond the site boundary. While Burton/Higher Ground has admittedly performed studies, there are no assurances in the proposal that if such disturbing noise is able to be heard that corrective measures will be required. Further, the SB Council requests that at a minimum, sound monitoring in the Queen City Park neighborhood, particularly on Maple Avenue, be required for at least five performances following the opening of the performing arts center financed by Burton/Higher Ground. If such monitoring evidences the detection of disturbing event sound emitting from the performing arts center, such sound will be a violation of any granted permit condition that can be enforced.

b) Event Attendee Sound:

The SB Council is concerned with the noise that will result from attendees arriving, attending and leaving events at the performing arts center. As stated, this is a quiet area in the evening/night. The introduction of potentially several hundred attendees and cars to this area possibly multiple times a week at hours when there is traditionally little other sound will undoubtedly have an adverse impact on the area and its residents. Considering the fact that attendees will be attending music performances where alcohol will be served, the potential for disturbing noise is that much greater. The SB Council asks the DRB to please consider any/all enforceable measures to reduce/minimize/eliminate such sounds and to consider this issue and its impact when deciding whether the application should be granted.

2) <u>Traffic</u>. The SB Council's primary concerns relating to traffic are: a) ensuring that no event attendees intentionally or inadvertently use Central Avenue; b) ensuring that safety/emergency vehicles can access the Queen City Park Neighborhood at all times; and c) ensuring that Queen City Park residents and visitors can access the neighborhood at all times and are not prevented or hindered in doing so by attendees arriving and leaving events at the performing arts center.

The SB Council believes that some approval conditions may be able to moderately alleviate these concerns. As proposed, however, Burton/Higher Ground's plans do not go far enough and are not enforceable. Currently, Burton/Higher Ground commits that only during large events (over 1,000 attendees) will personnel be posted at the southwest exit to monitor and direct vehicle traffic. Otherwise, for events with 750–1,000 attendees, a sign would be placed at the entrance to Central Avenue discouraging access and no measures will be taken for events with less than 750 attendees. The SB Council insists that Burton/Higher Ground be required to actively undertake efforts to prevent all

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- attendees, regardless of event size, from utilizing Central Avenue and the roads of the Queen City Park neighborhood. An approval condition requiring Burton/Higher Ground to prevent its attendees from using Central Avenue and allowing residents to do so could be enforced to ensure that any undertaken measures are working properly. The SB Council further requests that if this application is approved, an approval condition be imposed requiring Burton/Higher Ground personnel to actively assist emergency vehicles in accessing/departing the Queen City Park neighborhood.
- 3) Parking. If this application is approved, the SB Council would like Burton/Higher Ground to be required to make all efforts to ensure that parking for events be on the Burton property only and not on South Burlington Streets, at Red Rocks Park or in the Queen City Park neighborhood. The SB Council is concerned that the venue's location adjacent to the City of South Burlington property line will entice event attendees to utilize parking at Red Rocks Park or on South Burlington Streets. The SB Council accordingly requests, if this application is approved, that an enforceable approval condition be imposed that no event parking shall be allowed on City of South Burlington Streets or at Red Rocks Park.
- Safety. The SB Council is concerned that the number of personnel for events, although subject to minimums based on event size, is solely in the discretion of Burton/Higher Ground and is insufficient for the safety of event attendees, neighboring residents and Red Rocks Park for many of the events that will occur at the venue. The proposed venue is larger than previous Higher Ground venues and the SB Council is worried that the proposed minimums are derived from Higher Ground's experience at its current and past locations. Higher Ground is currently located on Williston Road in South Burlington and was previously located on a main thoroughfare in Winooski. Both of those areas are/were heavily trafficked with a police presence. The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. This being the case, the safety of event attendees, residents of the surrounding neighborhood(s) and South Burlington's Red Rocks Park will largely be left in the hands of Burton/Higher Ground personnel. The SB Council recognizes that different events require different staffing levels, however, the SB Council requests that, if this application is approved, more stringent personnel requirements be put in place for any event that concludes at 10:00 pm or later. Further, for any event that ends at or after 10:00 p.m., Burton/Higher Ground be required to pay the cost of at least one law enforcement officer with a patrol car on sight to monitor event closure and egress of attendees. This requirement could be for a law enforcement officer from either Burlington Police Department or the South Burlington Police Department.
- 5) Protection of Red Rocks Park. The SB Council is concerned that there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is the goal of the SB Council to see every effort be made by Burton/Higher Ground to ensure that the park and its users are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. Red Rocks Park has fragile ecosystems that are put at risk through heavy usage and off-trail use. Acknowledging that

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Red Rocks is a public park, the SB Council is concerned that the park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. The Council is also concerned that after events could cause nighttime disturbances and present a nuisance to Queen City Park residents abutting the Park or result in harm to nighttime visitors of the park. The SB Council believes that Burton/Higher Ground's plan following only large events to discourage event attendees from entering the park is insufficient. The SB Council requests that if this application is approved, conditions be put in place that require Burton/Higher Ground to provide staff, monetary assistance, or other adequate protections to the City of South Burlington for the purpose of enforcing park rules when the park is open and prevent entry into the park when the park is closed.

6) Staffing/Personnel Levels. As has been outlined above, the SB Council would like Burton/Higher Ground to be required to have sufficient personnel and security to address all of the above-raised concerns. While Burton/Higher Ground has proposed minimum staffing and security based on number of attendees to an event, the Council is concerned that this number is insufficient for many of the events that will take place at the site and there is no enforcement mechanism if an event is understaffed. Due to the site's remote location and greater capacity (over current and past Higher Ground venues), the SB Council requests that the number of event attendees triggering staffing levels be reduced (ex. under 500, 500-750 and 750+). In addition, if this application is approved, SB Council requests additional conditions requiring increased staffing levels for any event ending at 10:00 p.m. or later.

The SB Council respectfully asks that the Burlington DRB take these identified concerns into account when analyzing this application under its Comprehensive Development Ordinance and conditional use review standards. In so doing, the SB Council believes the DRB will find that as currently proposed, the performing arts center will negatively affect the character of the area, will impose nuisance impacts from noise and vibrations that are greater than typically permitted by other permitted uses in the same zoning district at the time they are occurring, and that it is questionable whether the transportation system is capable of supporting the proposed use in addition to the existing uses in the area.

The South Burlington City Council appreciates your consideration of its concerns. Thank you all for your time and effort.

Sincerely,

Colin K. McNeil

McNeil, Leddy and Sheahan, P.C.

Attorneys for the South Burlington City Council